

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA
3

4 In re Tyrone Noel Nunn,
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6

Case No. 2:24-cv-01236-JAD-MDC

7
8 **Order Dismissing**
9 **and Closing Case**
10

11 I dismissed plaintiff Tyrone Nunn's complaint with leave to amend by March 28, 2025,
12 because that pleading concerned events that purportedly happened to another inmate, not Nunn,
13 and pro se litigants like Nunn cannot pursue claims on behalf of others.¹ Alternatively, I gave
14 Nunn until March 28, 2025, to file a notice under Federal Rule of Civil Procedure 41(a)(1)(A)(i)
15 voluntarily dismissing this action if he intended to bring claims on behalf of another inmate, not
16 himself.² That deadline expired and Nunn did not file an amended complaint, voluntary-
17 dismissal notice, or other response.

18 District courts have the inherent power to control their dockets and "[i]n the exercise of
19 that power, they may impose sanctions including, where appropriate . . . dismissal" of a case.³ A
20 court may dismiss an action based on a party's failure to obey a court order or comply with local
21 rules.⁴ In determining whether to dismiss an action on this ground, the court must consider:
22 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its
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¹ ECF No. 4.

² *Id.*

³ *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

⁴ *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for lack of prosecution and failure to comply with local rules).

1 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
2 cases on their merits; and (5) the availability of less drastic alternatives.⁵

3 The first two factors, the public's interest in expeditiously resolving this litigation and the
4 court's interest in managing its docket, weigh in favor of dismissal of the plaintiff's claims. The
5 third factor, risk of prejudice to defendants, also weighs in favor of dismissal because a
6 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an
7 action.⁶ The fourth factor—the public policy favoring disposition of cases on their merits—is
8 greatly outweighed by the factors favoring dismissal.

9 The fifth factor requires the court to consider whether less drastic alternatives can be used
10 to correct the party's failure that brought about the court's need to consider dismissal.⁷ Courts
11 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
12 explore possible and meaningful alternatives.”⁸ Because this action cannot proceed until Nunn
13 files an amended complaint, and litigation cannot progress without a plaintiff's compliance with
14 the court's orders, the only alternative is to enter a second order setting another deadline. But
15 issuing a second order will only delay the inevitable and further squander the court's finite
16 resources because Nunn ignored the first order. Nunn has filed over 80 pro se lawsuits in this

18 ⁵ *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
19 *Malone*, 833 F.2d at 130).

20 ⁶ *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

21 ⁷ *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining that considering less
22 drastic alternatives *before* the party has disobeyed a court order does not satisfy this factor);
23 *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th Cir. 2002) (explaining that “the
persuasive force of” earlier Ninth Circuit cases that “implicitly accepted pursuit of less drastic
alternatives prior to disobedience of the court's order as satisfying this element[.]” i.e., like the
“initial granting of leave to amend coupled with the warning of dismissal for failure to
comply[.]” have been “eroded” by *Yourish*).

⁸ *Henderson*, 779 F.2d at 1424.

1 district since July 2023.⁹ Dozens of these lawsuits have been dismissed because Nunn failed to
2 correct fundamental defects with them like filing a single, signed complaint and either paying the
3 filing fee or filing a complete application to proceed *in forma pauperis*.¹⁰ Setting another
4 deadline is not a meaningful alternative given these circumstances. So the fifth factor favors
5 dismissal.

6 Having thoroughly weighed these dismissal factors, I find that they weigh in favor of
7 dismissal. IT IS THEREFORE ORDERED that **THIS ACTION IS DISMISSED** without
8 prejudice based on the plaintiff's failure to file an amended complaint in compliance with the
9 court's order, leaving no claims pending. The Clerk of Court is directed to **ENTER**
10 **JUDGMENT** accordingly and **CLOSE THIS CASE**. If Tyrone Nunn wishes to pursue his
11 claims, he must file a complaint in a new case, and he must pay the fee for that action or file a
12 complete application to proceed *in forma pauperis*.

13 IT IS FURTHER ORDERED that the application to proceed *in forma pauperis* (**ECF**
14 **No. 3**) is **GRANTED**. This status doesn't relieve the plaintiff of his obligation to pay the full
15 \$350 filing fee under the statute; it just means that he can do it in installments. And the full \$350
16 filing fee remains due and owing even though this case is being dismissed.

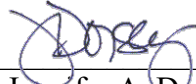
17 To ensure that the plaintiff pays the full filing fee, IT IS FURTHER ORDERED that the
18 Nevada Department of Corrections must pay to the Clerk of the United States District Court,
19 District of Nevada, 20% of the preceding month's deposits to the account of **Tyrone Nunn,**
20 **#1252474**, (in months that the account exceeds \$10.00) until the full \$350 filing fee has been

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22 ⁹ I take judicial notice of the online docket records of the U.S. Courts, which may be accessed by
the public at: <https://pacer.uscourts.gov>.

23 ¹⁰ See, e.g., *Nunn v. Dep't of Corr.*, Case No. 3:24-cv-00050-ART-CLB, ECF No. 4 (D. Nev.
Nov. 20, 2024) (collecting cases).

1 paid for this action. The Clerk is directed to SEND a copy of this order to (1) the Finance
2 Division of the Clerk's Office and (2) the attention of **Chief of Inmate Services for the Nevada**
3 **Department of Corrections** at formapauperis@doc.nv.gov.

4 Dated: April 14, 2025



U.S. District Judge Jennifer A. Dorsey